

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNIS WALSH, and DEZRA GUTHRIE and)
FRANK ORTEGA and LESLIE SWEENEY-)
FAGAN, and JOHN SWEENEY and)
KATHERINE ORTIZ,)

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

No. C14-00424 MJP

SUPPLEMENTAL
DECLARATION OF JASON
COON IN SUPPORT OF
DEFENDANT MICROSOFT'S
MOTION TO DISMISS UNDER
RULE 12(b)(1)

**Noted for Consideration:
Friday, August 29, 2014**

I, Jason Coon, declare as follows:

1. **Identity of Declarant.** I am over 21 years of age and am competent to give this declaration. I am Senior Enforcement Program Manager at Microsoft Corporation, where I work in the Xbox LIVE Policy and Enforcement team. I have been employed by Microsoft since May 2001, and have held my current position since October 2010. My employment responsibilities include participation in writing and enforcing the Xbox LIVE Terms of Use (the "Xbox LIVE TOUs").

2. **Xbox LIVE Accounts.** Xbox LIVE is an online service Microsoft provides for use with Microsoft Xbox consoles. Subscribers to Xbox LIVE can connect their Xbox consoles to the Internet to, among other things, play interactive video games with other Xbox LIVE subscribers.

1 Microsoft maintains a database containing records for those individuals who have subscribed to
 2 Xbox LIVE (the “Xbox LIVE User and Offering database”). To open an Xbox LIVE account, a
 3 subscriber must provide, among other information, his or her name, email address, telephone
 4 number, country, and zip code. In addition, any subscriber to Xbox LIVE, as part of the account-
 5 opening process, must create a “gamertag”—i.e., a unique nickname of up to fifteen characters
 6 that is associated with that Xbox LIVE account.

7 **3. No Record of Xbox LIVE Accounts for Plaintiffs Leslie Sweeney-Fagan and**
 8 **Katherine Ortiz.** Microsoft’s Xbox LIVE User and Offering database does not reflect that
 9 Plaintiffs Leslie Sweeney-Fagan and Katherine Ortiz ever opened any Xbox LIVE account.
 10 Microsoft’s records show that no gamertag exists for Ms. Sweeney-Fagan or Ms. Ortiz in
 11 connection with any Xbox LIVE account. Microsoft also searched for but found no Xbox LIVE
 12 account records for either of them using the home address, phone numbers, and email addresses
 13 that I understand their counsel provided for them.

14 **4. No Record of Xbox LIVE Accounts for Plaintiff Frank Ortega.** Microsoft’s Xbox
 15 LIVE User and Offering database does not reflect that Plaintiff Frank Ortega ever opened any
 16 Xbox LIVE account. Microsoft’s records show that no gamertag exists for Mr. Ortega in
 17 connection with any Xbox LIVE account. Microsoft also searched for but found no Xbox LIVE
 18 account records for Mr. Ortega using the home address, phone numbers, and email addresses that
 19 I understand his counsel provided for him. I have reviewed the Declaration of Lead Plaintiff
 20 Frank Ortega, which I understand Mr. Ortega filed with Plaintiffs’ Response to Microsoft’s
 21 Motion to Dismiss in *Mendoza v. Microsoft Corporation*, No. C14-00316 MJP [Dkt. 54-8]. In
 22 that Declaration, Mr. Ortega states he had a gamertag of “Sebian09.” Microsoft searched for any
 23 record of the existence of the gamertag “Sebian09” but found none. In an abundance of caution,
 24 Microsoft also searched for any record of the existence of the gamertag “Sebian 09” but found
 25 none. I also have access to records containing all gamertags created since November 2005, and
 26 there is no record of a “Sebian09” or “Sebian 09” gamertag.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Executed at Redmond, Washington on July 17th, 2014.

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5 _____
6 Jason Coon
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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 18th day of July, 2014.

Davis Wright Tremaine LLP
Attorneys Microsoft Corporation

By s/ Fred B. Burnside

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